

Warley (Migration) [2020] AATA 2393 (17 June 2020)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Christian Edward Warley

CASE NUMBER: 1723480

HOME AFFAIRS REFERENCE(S): BCC2015/2676926

MEMBER: Justine Clarke

DATE: 17 June 2020

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 17 June 2020 at 5:40pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – spouse – genuine and continuing relationship – no response to tribunal’s s 359 letter – validly married – limited evidence of financial, household and social aspects of relationship – living separately temporarily while studying interstate – nature of commitment – inconsistent information and implausible explanations – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F(2), 65, 359(2), 359C(1), 360(3), 363A

1. *Migration Regulations 1994 (Cth), 1.15A(3), Schedule 2, cl 820.211(2)*

2.

3. **CASE**

4. *Hasran v MIAC [2010] FCAFC 40*

5. *He v MIBP [2017] FCAFC 206*

6. *Jayasinghe v MIMA [2006] FCA 1700*

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

7. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
8. At the time of this decision, the applicant is a 33-year old national of the United Kingdom.
9. On 8 September 2015, the applicant applied for the visa based on his relationship with his sponsor, Ms Hayley Collis. At the time of this decision, Ms Collis is 38 years of age.
10. At the time of application, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. The primary criteria include cl.820.211.
11. The applicant provided the Tribunal with a copy of the primary decision. The delegate refused to grant the visa because they found that the visa applicant did not satisfy cl.820.211 of Schedule 2 to the Regulations. The delegate assessed the application pursuant to cl.820.211(2), finding it to be the only time of application subclause relevant in the circumstances.
12. The primary decision notes that, on 28 February 2017, the Department wrote to the applicant to inform him of adverse information and to provide him with an opportunity to comment on it. The adverse information was that a delegate had received information that the applicant entered into a contrived relationship with the sponsor for the sole purpose of gaining entry into Australia and that he was in relationship with a female in Queensland where he had resided for a period of time while the sponsor remained in Melbourne. The delegate outlined the applicant's response in the primary decision but considered that the applicant's explanation did not address the allegation.
13. The delegate also noted that, when interviewed by telephone by the Department on 10 July 2017, the applicant and the sponsor had provided inconsistent information. While the applicant was provided an opportunity to comment on this information and did provide a response, in the delegate's view, the applicant's explanations were 'implausible' and that the inconsistencies detrimentally affect the applicant's and the sponsor's credibility. The delegate concluded that 'the most likely explanation' for the adverse information obtained by the Department is that the parties were not in a genuine and ongoing spousal relationship.
14. Having considered the information and evidence, submitted in support of the application, the delegate found that the information and evidence did not demonstrate that, at the time of application, the applicant satisfied the definition of spouse under s.5F of the Act. Accordingly, the delegate found that the applicant did not meet cl.820.211(2)(a).
15. On 29 September 2017, the applicant applied to the Tribunal for review of the primary decision. In this review, the applicant was represented by his registered migration agent.
16. On 27 May 2020, the Tribunal wrote to the applicant, pursuant to s.359(2) of the Act, inviting him to provide further information to support his claims that he and his partner are in a spouse or de facto relationship. The letter included an information sheet, entitled 'Evidence in Partner Cases', which outlined the range of circumstances that the Tribunal is obliged to consider pursuant to r.1.15A (in the case of a spouse relationship) or r.1.09A (in the case of

a de facto relationship). The letter stated that, if the information was not provided in writing by 10 June 2020, or an extension not sought and granted by that date, the Tribunal may make a decision on the review without taking further steps to obtain the information. The applicant was informed that, in such circumstances, he would lose any entitlement he might otherwise have had under the Act to appear before the Tribunal to give evidence and present arguments. Information about the loss of the right to a hearing was in bold type.

17. The applicant did not provide the requested information or seek an extension of time in which to provide the requested information by 10 June 2020.
18. As at the time of this decision, the Tribunal has received no response at all to the s.359(2) letter.
19. As the applicant did not provide the information within the permitted time period, s.359C(1) applies and pursuant to s.360(3), the applicant is not entitled to appear before the Tribunal. The effect of s.363A of the Act is that, if a review applicant has no entitlement to a hearing, the Tribunal has no power to permit him or her to appear: *Hasran v MIAC* [2010] FCAFC 40. The Tribunal has decided to proceed to decision without taking further steps to obtain the information. The Tribunal has taken this action because of the applicant's limited engagement with this review.¹
20. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

21. The issue for determination in this review is whether, at the time of application on 8 September 2015, the applicant was the spouse of the sponsor.
22. As Middleton J stated in *Jayasinghe v MIMA* [2006] FCA 1700 at [35]:
 23. Evidence of events subsequent to the visa application is relevant if it 'tends logically to show the existence or non-existence of facts relevant to the issue to be determined': see *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 4 ALD 139 at 160 per Deane J. The Tribunal must consider all relevant evidence, which may include evidence of events subsequent to the date of application insofar as it assists in the task of determining whether the appellant and the sponsor were in a marriage relationship at the time of the application. The question of whether particular evidence is relevant and the weight it is to be given is clearly a matter for the Tribunal.
24. In deciding this matter, the Tribunal has also had regard to evidence of events subsequent to the date of the visa application.
25. In assessing the issue for determination in this review, the Tribunal has had regard to all documents on the Department's file and the Tribunal's file. However, the Tribunal notes at the outset that the applicant made no submissions and provided no evidence to the Tribunal in this review.

¹The Tribunal notes that, on 5 November 2019, the Tribunal wrote to the applicant to request information (this was not pursuant to s.359(2)). The applicant did not provide the further information requested.

Whether the parties are in a spouse or de facto relationship

26. Clauses 820.211(2)(a) requires that, at the time the visa application was made 8 September 2015, the applicant was the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. The applicant claims to be the spouse of the sponsor who is an Australian citizen. The applicant submitted a copy of the sponsor's birth certificate with the Department which shows that she was born in Australia. Based on the evidence before it, the Tribunal is satisfied that the sponsor is an Australian citizen by birth.
27. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)–(d).
28. In forming an opinion about these matters, regard must be had to all the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.
29. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

30. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The applicant and the sponsored were married in South Yarra, Victoria on 8 September 2015—the same day that the applicant applied for the visa. A copy of the parties' 'decorative' marriage certificate is on the Department's file. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

31. Regulation 1.15A(3) factors

32. In considering the issues in r.1.15A(3), the Tribunal has had regard to all documents on the Department's and the Tribunal's files. As already noted, the applicant submitted very little information and no substantive evidence to the Tribunal in this review.

33. The claimed allegations

34. As was noted earlier, the primary decision outlines that, on 28 February 2017, the delegate sent a natural justice letter to the applicant informing him of adverse information that was said to have been received by a delegate that the applicant had entered into a contrived relationship with the sponsor for the sole purpose of gaining entry into Australia and that he was in relationship with a female in Queensland where he had resided for a period of time while the sponsor remained in Melbourne. The delegate outlined the applicant's response in the primary decision but considered that the applicant's explanation did not address the allegation.
35. Having reviewed and considered the applicant's written response to the natural justice letter of 28 February 2017, the Tribunal takes a different view to the delegate. The Tribunal considers that the applicant not only addressed the allegations, he clearly and strongly refuted them.

36. The Tribunal has reviewed all the documents on the Department's file and there is no record of any allegations having been received, other than the statements made in the natural justice letter and in the primary decision. Accordingly, in the absence of any record of any such allegation, the Tribunal places no weight on the claimed allegations. The claimed allegations are not reasons or a part of the reasons for affirming the decision under review.

37. *The financial aspects of the relationship*

38. Any joint ownership of real estate or other major assets, any joint liabilities, the extent of any pooling of financial resources, whether one person in the relationship owes any legal obligation in respect of the other and the basis of any sharing of day-to-day household expenses are relevant factors to consider when assessing the financial aspects of the relationship.
39. There is no evidence before the Tribunal that, at the time of application or at the time of this decision, the applicant and the sponsor jointly owned or own real estate or other major assets or that they had or have any major joint liabilities. The Tribunal notes that the applicant provided evidence that the sponsor transferred a motor vehicle to the applicant on 30 May 2016. Apart from this, there is no evidence that one person in the relationship owed or owes any legal obligation in respect of the other.
40. The parties' main financial asset appears to be a joint bank account held with ANZ. The Department's file contains a copy of an interim statement of account for the period from 5 June 2015 to 9 September 2015. The applicant also submitted, to the Department, several pages of what appear to be screenshots from a mobile phone of statements from a bank account. The Tribunal notes that there are nine screenshots per A4 page, so the information is very difficult to read without a magnifying glass. The Tribunal has used a magnifying glass to view the material. The Tribunal notes that some of the screenshots give the same account number as for the joint bank account with ANZ.
41. With respect to the extent of any pooling of financial resources, the Tribunal notes that in his record of responses for the application for the visa and in his signed relationship statement of 28 July 2016, the applicant claimed that he and the sponsor shared their money. However, the evidence that has been submitted does not clearly support this claim. From reviewing the bank documents, the Tribunal finds that the applicant deposited money into the joint bank account, including having his wages deposited there, but that the sponsor's wages were not similarly deposited. Considering the evidence before the Tribunal, the Tribunal finds that, at the time of application, there was very limited pooling of financial resources.
42. With respect to any sharing of day-to-day household expenses, having reviewed the bank documents, the Tribunal acknowledges that, sometimes, the account was used to pay for day-to-day household expenses. However, it is not clear that the expenditure was for two people. The Tribunal considers that, overall, the use of the joint account for day-to-day household expenses could have been the expenditure of one person.
43. In the applicant's record of responses for the application for the visa, he claimed that he and the sponsor 'share bills equally'. Similarly, in his signed relationship statement of 28 July 2016, he claimed that bills were split 'down the middle'. However, the applicant has not submitted copies of any rental receipts or joint utility bills in support of his claim, no doubt because the applicant and the sponsor were said to be in a house share arrangement where they claimed, in their telephone interviews of 10 July 2017, that they paid cash for accommodation.
44. The Tribunal notes the typed statement, said to have been made by Kerry Evans on 9 September 2015. It relevantly states that the applicant and the sponsor contribute an

amount of \$200 per week towards board and lodgings at a specified property in Wyndham Vale and 'share a half portion of utilities not inclusive of this board lodgement amount'. While the statement does not state Ms Evans' relationship to the parties or to the property, the Tribunal notes that during his telephone interview on 10 July 2017, the applicant stated that there was a house share arrangement with Kerry and Robin Evans. The Tribunal notes that the statement said to have been made by Ms Evans has not been signed. In the circumstances, the Tribunal gives very little weight to it.

45. The Department's natural justice letter of 18 July 2017 (following the telephone interviews of 10 July 2017) and the primary decision state:

46. When asked how much rent you and your sponsor pay, you advised that an amount of \$250.00 is paid in cash weekly and it is shared. Your sponsor advised that an amount of \$100.00 is paid in cash and that you pay a higher share at times.

47. In his written response, the applicant stated:

48. it is correct that we do share the amount of \$250 per week together and it is correct that I will often pay more if Hayley is unable to meet this amount. She is not incorrect in her statement of the rent paid.

49. Having considered the response, the Tribunal takes a different view from the delegate who found the explanations offered in response to the natural justice letter to be 'implausible'. The Tribunal considers that the applicant's response is plausible. Accordingly, this information, perceived by the delegate to be an inconsistency, is not a reason or a part of the reason for the Tribunal to affirm the decision under review.

50. However, there is no credible documentary evidence from a third party corroborating the applicant's and the sponsor's claims that they both paid cash for board at the property in Wyndham Vale. Accordingly, the claims made at the telephone interviews and in the applicant's statement in response are mere assertions.

51. Having reviewed and considered all the evidence of the financial aspects of the relationship, the Tribunal is concerned at the paucity of evidence that has been submitted and is concerned that the evidence that has been provided is suggestive of a housemate relationship rather than a spousal relationship. In the circumstances, the Tribunal gives very little weight to the evidence of the financial aspects of the relationship.

52. *The nature of the household*

53. Any joint responsibility for the care and support of children, the living arrangements of the persons and any sharing of the responsibility for housework are matters to be considered when assessing the nature of the household.
54. The Tribunal does not have any evidence that the applicant and the sponsor have children together. There is evidence before the Tribunal that the applicant has a child from a previous relationship who is living in the UK but, on the applicant's own evidence, he has 'no custodial rights' in respect of the child. No evidence was submitted of any joint responsibility by the applicant and the sponsor for the care and support of this child.
55. With respect to the persons' living arrangements, the Tribunal notes that in the record of responses for the application for migration to Australia by a partner, it was claimed that, at the time of application, the applicant and the sponsor were living together at a property at number 7 of a specified street in Wyndham Vale, Victoria. The unsigned statement from Kerry Evans also states that the applicant and the sponsor were living at the address. The

Tribunal notes that the applicant submitted very few documents addressed jointly to both him and the sponsor at the Wyndham Vale address.² He also submitted very few documents addressed to them each singularly at that address.³

56. On an unspecified date, the applicant submitted a Form 1022 to inform the Department that he had changed his residential address from the Wyndham Vale address to Pacific Pines in Queensland. In his signed relationship statement of 21 October 2016, the applicant claimed that he was 'studying in the Gold Coast, for my nursing'. On 18 November 2016, he updated his residential and postal addresses with the Department to a specific property in Labrador, Queensland. On 4 January 2017, he updated his residential and postal addresses with the Department once more to a specific property in Nerang, Queensland. The Tribunal notes that the applicant submitted some evidence of his various residential addresses in Queensland to the Department.
57. The Tribunal is mindful that the parties need not live together in order to be spouses. Rather, s.5F(2)(d) will be met if they do not live separately and apart on a permanent basis. The applicant's contention appears to be, from the statements made in his signed relationship statement of 21 October 2016, that the separate living arrangements were temporary and that he and the sponsor did not live separately and apart on a permanent basis.
58. On 20 February 2017, the applicant updated his residential and postal addresses with the Department to a specific address in Victoria. The Tribunal notes that this is the same street in Wyndham Vale that the applicant claims that he had been living earlier. However, all the previous information that was submitted was that the applicant and the sponsor had been living together at number 7 and, on this occasion, the applicant advised that he was living at number 6. The Tribunal finds this troubling. It is possible that the applicant made a mistake when updating the Department of his residential and postal address. However, the Tribunal considers that it is reasonable to expect that the applicant would have taken care in ensuring that the details were correct given that was the sole point of his updating the Department. The Tribunal notes that the Department's natural justice letter of 28 February 2017 was addressed to the applicant at number 6 but that the applicant's response sent on 8 March 2017 (oddly dated 10 March 2017) listed his address as number 7.
59. In the applicant's signed relationship statement of 21 October 2016, he claimed that, 'we are deciding March 2017, to get our own place as we live with friends'. There is no evidence before the Tribunal whether the applicant and the sponsor achieved this claimed plan.
60. Having considered all the information and evidence before it, the Tribunal considers that there is no strong documentary evidence as to the parties' claimed joint living arrangements at any point during their claimed spousal relationship.
61. Further, the Tribunal is concerned that some of the evidence that has been provided may not accurately reflect the parties' living arrangements at the time. For example, the applicant's letter from the Australian Federal Police, dated 5 August 2016, in respect of his national police certificate was sent to him at the Wyndham Vale address but other evidence submitted suggests that the applicant was living in Pacific Pines in Queensland at that time.⁴

²The most notable document appears to be the interim statement of account from ANZ of 9 September 2015.

³For example, a tax invoice from Bupa dated 23 September 2015 gives the applicant's address as the Wyndham Vale address as well as a letter from the Australian Federal Police dated 5 August 2016 in respect of his national police certificate, and Optus bills issued in September, October and November of 2016. The sponsor's driver's licence gives her address as the Wyndham Vale address as well as a letter from the Australian Federal Police dated 15 August 2016 in respect of her national police certificate.

62. In his record of responses for the application for the visa, the applicant claimed that he and the sponsor 'share house duties equally, for example if one cooks the other one cleans'. However, there is no corroborating evidence as to any sharing of the responsibility for housework throughout the period of the claimed spousal relationship.

63. Overall, the Tribunal is concerned that the applicant has submitted so little documentary evidence in support of his claim that, at the time of application, he and the sponsor were living together as a couple and sharing the responsibilities of a household. The Tribunal gives very little weight to the evidence that has been submitted in respect of the claimed nature of the household.

64. *The social aspects of the relationship*

65. Whether the persons represent themselves to other people as being married to each other, the opinion of the persons' friends and acquaintances about the nature of the relationship and any basis on which the persons plan and undertake joint social activities are relevant matters to be considered in determining the social aspects of the relationship.

66. There is very limited evidence before the Tribunal that the applicant and the sponsor have represented themselves to other people as being married to each other. The Tribunal notes the photograph of them on the wedding day with two others, who appear to be friends. The Form 888 statutory declaration made by Kerryn Evans on 4 October 2016 states that she was a witness at the wedding. The Tribunal gives some weight to the photograph and to this part of the Form 888.

67. The Tribunal notes that, in his statement of 21 October 2016, the applicant claimed that 'we have a fantastic family and friends to help support me and my wife'. If this is true—and certain parts of the applicant's written response to the Department's natural justice of 18 July 2017 suggest that it was glib rather than an accurate and fulsome description—then the Tribunal is concerned why the applicant did not submit any evidence from family members.

68. With respect to the opinion of the persons' friends and acquaintances about the nature of the relationship, the Tribunal notes that the primary decision states that two Form 888 statutory declarations were submitted, one made by Kerryn Evans on 4 October 2016 and one made by Paula Evans on 23 September 2015. The declaration made by Paula Evans is no longer on the Department's file. The Tribunal gives some weight to Kerryn Evans' declaration explaining how she knows the applicant and the sponsor and why she believes their spousal relationship to be genuine. The Tribunal is mindful that it is possible that, if the Tribunal had viewed Paula Evans' declaration, it would have given weight to that evidence. However, the Tribunal considers it highly improbable that any evidence submitted in such a statement would have been of such strength as to cause the Tribunal, in light of all the other evidence in this case, not to affirm the decision under review.

69. With respect to joint social activities, the Tribunal notes that, in his record of responses for the application for the visa, the applicant claimed the following in respect of the social aspects of the relationship.

70. We enjoy going out shopping, to restaurants, cinema, visiting friends and family, walking along the beach, we also like to read, and go to the bar for a casual drink.

71. He reiterated a number of these claims in his signed relationship statement of 28 July 2016, when outlining the development of the relationship, stating, 'we spent a lot of time together

⁴Namely the Jetstar booking made on 24 June 2016 for a return trip from the Gold Coast to Melbourne, departing 17 August 2016 and returning 4 September 2016.

going to the movies, dinner, trips to the city shopping, nights out, what normal couples do, spending quality time together'. The applicant has submitted some photographs of him and the sponsor at various social outings with others. The screenshots taken from social media also evidence the applicant and the sponsor as having planned and undertaken some joint social activities. The Tribunal gives some weight to this evidence.

72. However, the Tribunal is concerned that most of the evidence that has been provided in respect of this factor suggests that the relationship between the applicant and the sponsor is one of friends rather than as spouses for the purposes of the Act. In view of this concern, the Tribunal gives only a little weight to the evidence of the social aspects of the relationship.

73. *The nature of the persons' commitment to each other*

74. The duration of the relationship, the length of time during which the persons have lived together, the degree of companionship and emotional support that the persons draw from each other, and whether the persons see their relationship as long-term are all aspects to be considered in determining the nature of the person's commitment to each other.

75. In his record of responses for the application for the visa, the applicant described the development of his claimed relationship with the sponsor in the following way.

76. We met through mutual friends, went on couple of dates to see if we liked each other, our relationship developed very quickly, we fell in love and knew what we wanted, after several months we decided to get engaged, and went on to get married.

77. His relationship statements of 28 July 2016 and 21 October 2016 further detail his claims about the development of the relationship and the nature of each person's commitment to the other. However, the Tribunal notes that the applicant has provided no evidence attesting to the nature of the parties' commitment to one another since the primary decision was made to refuse the visa application on 12 September 2017.

78. The Tribunal has had regard to the applicant's claim that he first met the sponsor through mutual friends at a BBQ in June 2014; that they developed a friendship over time, then an exclusive relationship and that they were married on 8 September 2015. No clear evidence has been provided as to the exact date that the parties started their claimed committed partner relationship. In the record of the applicant's responses for the application for the visa, the applicant stated that they committed to a shared life together to the exclusion of all others on 7 June 2014. However, the Tribunal queries the accuracy of this statement as from the other evidence submitted, it appears that this may have been the date that the applicant and the sponsor first met—not the date that they committed to a shared life together to the exclusion of all others. The Tribunal acknowledges that the marriage is valid and that, at the time of this decision, the applicant and the sponsor have been married for almost five years. The Tribunal gives some weight to the duration of the marriage.

79. With respect to the length of time during which the persons have lived together, the Tribunal notes that the typed, unsigned statement from Kerry Evans said to have been made on 9 September 2015 states that the applicant and the sponsor had commenced living at the Wyndham Vale address two months prior, which the Tribunal understands to be a reference to early July 2015. The interim statement of account for the period from 5 June 2015 to 9 September 2015 lists both parties as living at the address in Wyndham Vale. The Tribunal notes that this statement is addressed to 'Miss' Collis. In view of the evidence before the Tribunal, the Tribunal understands that the applicant is claiming that he and the sponsor started living together before their marriage. However, it is difficult for the Tribunal to make a finding about the length of time that the parties have lived together in a partner relationship

because, as has been explained earlier, there were periods when the applicant lived interstate and, overall, the Tribunal does not consider that strong evidence has been provided in support of the claim that, since the date that they married and the applicant applied for the visa, the applicant and the sponsor have lived together in a genuine and committed spousal relationship.

80. With respect to the degree of companionship and emotional support that the persons draw from each other, the Tribunal notes the applicant's claims, as outlined in his various relationship statements and his responses to the Department's natural justice letters.
81. For example, in his signed relationship statement of 28 July 2016, he claimed, 'we support each other no matter how hard our situations get', saying that 'we sort the problem out as adults straight away, we are very committed to each other and love each other very much'.
82. In the applicant's statement of 21 October 2016, he also claimed that the sponsor had helped him 'financially, physically and emotionally' in 'many difficult situations'. In particular, he specified that the sponsor had helped him with his anxiety at having moved to Australia, away from his 'home country'. He claimed to have suffered from anxiety and depression since May 2016 and that the sponsor has supported him 'so much'. He also explained that he had been studying nursing and claimed that 'my wife has supported me so much, due to me working away or studying away on placement' and that 'this shows how strong we are in our relationship and the commitment we have to support each other'. He said that that they communicated by phone—ringing and texting—'all the time'. In his written response to the Department's first natural justice letter, the applicant claimed that he did 'not see our relationship affected in any way by the forced separation', which he explained had been due to 'the necessity of study and the necessity of work'.
83. In his response to the Department's second natural justice letter, the applicant claimed:
 84. I would also like to mention that my wife suffers from severe anxiety. She has seen a psychologist regarding how to cope with this, which although helped her in some respects, she still suffers greatly from this problem, especially when unexpected events occur, that she feels she cannot control or manage to control. She has a very hard time with stressful situations and over the last 22 months has found the immigration process of her husband (myself) very difficult and extremely anxiety provoking.
85. However, there is no corroborating evidence about the mental health of the applicant or the sponsor. Further, the applicant's Optus records, the screenshots from social media (most likely Facebook) and screenshots from Viber do not clearly support the applicant's claim that he and the applicant were in communication 'all the time' nor that the communication was that of persons in a genuine and committed spousal relationship.
86. With respect to whether the persons see their relationship as long-term, the Tribunal notes that the applicant claimed, in his signed relationship statement of 28 July 2016, that he and the sponsor 'have many future plans', specifying these as being: 'to own our own, have kids and spend the best years of our remaining lives together'. He said that their plans to buy a house and to have children would be progressed once the applicant's application for the visa had been completed. In the applicant's subsequent signed relationship statement of 21 October 2016, he claimed that he and the sponsor were saving money for a holiday to visit friends and family around Australia as well as to travel to the applicant's hometown in the UK. There is no evidence before the Tribunal whether the applicant and the sponsor achieved any of these claimed plans or of any steps taken to realise them.

87. The Tribunal considers that there is limited evidence before the Tribunal that, at the time of application or any time thereafter, both persons saw and see their relationship as long-term.
88. As has already been noted, the applicant's application for the visa was refused because he did not provide the Department with sufficiently strong evidence. Further, the delegate found that the applicant's responses to the various issues that had been put to him for comment pursuant to its second natural justice letter (stemming from responses given at the telephone interviews carried out on 10 July 2017) to be implausible. The delegate found that the inconsistencies that had been provided at the telephone interviews—outlined in detail in the primary decision, which the applicant has provided to the Tribunal—to detrimentally affect the applicant's and the sponsor's credibility. Considering this, the Tribunal is surprised that the applicant has not provided the Tribunal with any further evidence about the nature of his relationship and commitment to the sponsor.
89. The Tribunal has considered the adverse information put to the applicant and his responses. Apart from the example given earlier in these reasons, the Tribunal takes the view that the applicant and the sponsor provided inconsistent information at their telephone interviews about those various matters as set out in the primary decision. Further, apart from the example given earlier in these reasons, the Tribunal finds that the applicant's explanations for the inconsistent information are implausible and that the inconsistencies cause the Tribunal to strongly question the applicant's and the sponsor's credibility. Accordingly, the Tribunal gives weight to these matters; they are adverse to the applicant's case.
90. The Tribunal notes a decision-maker is not required to make the applicant's case. It is for the applicant to satisfy the Tribunal that the requirements of the Act and Regulations have been met. Although the concept of onus of proof is not appropriate to administrative decision-making, the relevant facts of the individual case must be supplied by the applicant, in as much detail as is necessary to enable the examiner to establish the relevant facts. This is particularly so as the applicant is professionally represented, and it is reasonable to expect that his representative would have informed him about the need to provide any relevant evidentiary material.
91. Considering the limited evidence submitted and the Tribunal's concerns about the applicant's and the sponsor's credibility, the Tribunal gives very little weight to the evidence of the nature of the persons' commitment to each other.

92. **CONCLUSION**

93. As stated above, based on the evidence provided, the Tribunal is satisfied that, at the time of application on 8 September 2015, the applicant and the sponsor were validly married as required by s.5F(2)(a) of the Act.
94. For the reasons given with respect to the r.1.15A(3) matters, the Tribunal considers that the applicant has not put before the Tribunal sufficient evidence to establish that, at the time of application or at any time subsequent, the applicant and the sponsor:
- had a mutual commitment to a shared life as husband and wife to the exclusion of all others, as required by s.5F(2)(b) of the Act;
 - had a genuine and continuing relationship, as required by s.5F(2)(c) of the Act; and
 - were living together, or were not living separately and apart on a permanent basis, as required by s.5F(2)(d) of the Act.

95. Based on the above, the Tribunal is not satisfied that, at the time the visa application was made on 8 September 2015, the requirements of s.5F(2) were met. Accordingly, the Tribunal finds that cl.820.211(2)(a) is not established.
96. Further, the applicant has not claimed, and there is no evidence before the Tribunal, that he meets the alternative criteria in cl.820.211.
97. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa and the Tribunal must affirm the decision under review in respect of the applicant.

DECISION

98. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Justine Clarke
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).